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COMMITTEE ON THE PEACEFUL USES
OF OUTER SPACE
Legal Sub-Committee

CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES

Report of the Secretary-General

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JAPAN

[Original: English]

[6 June 1990]

The Government of Japan has become a party to the 1967 Outer Space Treaty, fully recognizing the principle set forth in article I of the Treaty that the exploration and use of outer space, including the Moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development.

The Government of Japan has also become a contracting State to the following multilateral and bilateral agreements:

1. Multilateral agreements

   a. Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (1968).

   b. Convention on International Liability for Damage Caused by Space Objects (1972).

   c. Convention on Registration of Objects Launched into Outer Space (1975).

   d. Agreement among the Government of the United States of America, the Governments of the States Members of the European Space Agency, the Government of Japan and the Government of Canada on Cooperation in the Detailed Design, Development, Operation and Utilization of the Permanently Manned Civil Space Station (1988).

   e. The International Telecommunications Satellite Organization (INTELSAT) Agreement (1971).

   f. The International Maritime Satellite Organization (INMARSAT) Convention (1976).

2. Bilateral agreements

   a. Exchange of Notes with the Government of the United States of America concerning Cooperation between Japan and the United States of America in Space Activities (1969).

   b. Exchange of Notes with the European Space Research Organization concerning Cooperation on Space Research and Development for Peaceful Purposes (1972).

   c. Exchange of Notes with the Government of the United States of America concerning the Terms and Conditions for the Launching Projects of Three Satellites (1975).

d. Exchange of Notes with the Government of Australia concerning Cooperation on the Project for the Geostationary Meteorological Satellite System (1977).

e. Exchange of Notes with the Government of Australia concerning Cooperation on the Project for the Geostationary Meteorological Satellite-2 System (1981).

f. Exchange of Notes with the Government of the United States of America concerning the Terms and Conditions under which Launching and Associated Services will be Furnished by the National Aeronautics and Space Administration of the United States of America for the Project of the First Material Processing Test on the Spacelab Undertaken by the National Space Development Agency of Japan (1985).

g. Exchange of Notes with the Government of Australia concerning Cooperation on the Project for the Geostationary Meteorological Satellite-3 (1985).

h. Exchange of Notes Verbales with the Government of the Kingdom of Thailand concerning Cooperation in a Joint Project for Remote Sensing Using the Marine Observation Satellite-1 (1986).

i. Exchange of Notes with the Government of the United States of America concerning the Terms and Conditions whereby Cooperation on the Geotail Scientific Satellite Programme will be Undertaken between the National Aeronautics and Space Administration of the United States of America and the Monbusho of Japan (1989).

In accordance with these agreements, the Government of Japan faithfully observes its international obligations and positively promotes international cooperation in space activities.

URUGUAY

[Original: Spanish]

[13 July 1990]

As a matter of policy, Uruguay holds the view that the use of outer space must be based on the principle of international cooperation, as set forth in the 1967 Outer Space Treaty. This binding principle determines the legality of all space activities.

The national paper submitted in 1982 as an official document to the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE 82) reads as follows:

"Exploration, investigation and utilization

Space activities should be carried out in the common interest of mankind and for exclusively peaceful purposes. Are these principles complied with in practice and are they effectively in force? How has mankind monitored observance of them? To what extent do all peoples, without discrimination, enjoy genuine access to and possess knowledge of the results of space exploration? To what extent have the space Powers complied with the principles of the 'space charter'?

Space is beyond any doubt the common heritage of mankind. In consonance with this golden rule, conceived on Earth and, therefore, pretentious and perhaps overweening, given the vast expanses of space to which man is here referring, the exploration, investigation and utilization of space must be conducted on behalf of and in the interest of its rightful object, namely mankind. Accordingly, if States, in conducting their outer space activities, do not respect this principle, their rights terminate, and they may no longer legitimately continue their usufruct of a common good without offering compensation to the title holder in exchange for the powers granted to them.

There must be a real benefit for mankind, freely accessible to all. It is not enough for the exploration or utilization of space to be pursued by one State for this duty to be deemed to have been discharged. Nevertheless, recognition must be accorded to the right of States to conduct the exploration and investigation of space and to benefit from such activities before other parties, as a logical corollary of their efforts and contributions. In the second instance, however, the utilization of space, since activities have been conducted on the basis of and at the expense of a resource which does not belong to those engaged in the activities, must make a positive contribution to mankind as a whole.

This delicate delimitation of the rights and duties of States in space activities lacks the necessary degree of precision, a shortcoming which will become more apparent as space activities progress. The international community must thus undertake this task. In this connection, the recently formulated Agreement Governing the Activities of States on the Moon and Other Celestial Bodies is but a modest step.

Peaceful use of outer space, the Moon and celestial bodies

This area is central to the harmonious exploration of space by man and, indeed, to the very survival of the human race.

Nevertheless, the relevant rules are inexplicit, obscure and inadequate, which means that there is a need for urgent development of this area, particularly if account is taken of the fact that some States, in specific, unilateral activities, are using outer space for military purposes.

...

Communications

This is, perhaps, the area in which space technology has generated the most revolutionary results, and it is, without doubt, one of those which most influence the day-to-day life of mankind on Earth. It is, moreover, an activity undergoing full commercial exploitation. And it is here where the absence of that fundamental safeguard of space law, namely, predictability, is most painfully obvious.

Without ignoring the inevitable conflict of interests which inspire States, given the very particular spectrum of space activities, such priority issues as the safeguarding of the sovereignty, national heritage and right to self-determination of peoples remain unresolved.

The service provided by communications satellites being an authentic 'space-based public service', there must be appropriate regulation as well as suitable provision for the right of protection of States.

While the free dissemination of information and ideas among the countries of the world and the right of every individual to freedom of expression and to have, receive and disseminate information and ideas unimpeded by national borders are of obvious importance, it is no less true that such rights must be accommodated with strict respect for the sovereign rights of States and non-intervention in their internal affairs.

The principles governing this activity must reflect these general considerations which, within the context of cooperation and international agreements, promote closer links between peoples and greater knowledge, while seeking to avoid aggression against States and their inhabitants and illegal interference undermining the cultures and norms of national life.

Remote sensing

The question arises of whether the promising potential represented by this striking technological advance will further its stated objectives, or whether, on the contrary, it has led in reality to an information oligopoly, denying information to peoples who have a legitimate right thereto without any discrimination.

In this context, the law must serve to mediate the interests and rights involved. Its complete absence violates elementary rules of international coexistence.

Legal regulation of this area must lead to the establishment of rules reconciling the interests of the operator of the remote sensors, those of the sensed State and those of the international community.

Such regulation must be based on the fundamental premise that every State has an inherent power of decision over its natural resources and, therefore, that any activity which directly or indirectly impairs that right is a violation of its sovereignty and of the fundamental principles of international law.

The special freedoms which arise in outer space, and on the Moon and other celestial bodies, cannot represent any kind of special freedom or right of penetration in respect of States on Earth, but must, rather, be compatible with the fundamental and inherent rights of States to safeguard their territory and to internal and external security in the broad sense in which these terms are currently understood.

Accordingly, the following principles must be reaffirmed:

(a) The results of activities involving the remote sensing of the Earth by States must be made available to the international community;

(b) The use of remote sensing data or of information derived from such data must be compatible with the legitimate rights and interests of other States;

(c) The sensed State must have prior access to the primary data generated from its territory; and

(d) The prior consent of States whose territories are sensed must be obtained before data or reports on their natural resources may be disseminated to third parties.

The foregoing is without prejudice to an emphasis on principles promoting the development of remote sensing activities on the basis of international cooperation, taking into particular consideration the needs of the developing countries.

...

Orbital activities

Precise regulation of Earth orbital activities is also esential in view of their current economic, political and military significance.

In the case of the geostationary orbit in particular, which is to be regarded as a limited natural resource in the current state of technology, it is necessary to take effective measures for its proper utilization.

The lack of such measures and the unfounded claims of some States to that orbit are creating an impasse with regard to the problem.

While the world is at present alarmed at the possible depletion of some essential natural resources, it seems to be indifferent to the depletion of another resource which is just as essential to civilization at this stage of history.

The geostationary orbit is unquestionably located in outer space and therefore subject to the regime governing outer space. Accordingly, no claim to special sovereignty over it can be made.

Therefore, in order to ensure its adequate, equitable and general use for all mankind and for States in particular, urgent efforts should be made to establish an international authority to administer it on the basis of the principles and instruments in force and specific regulations.

...

CONCLUSIONS

An analysis of the present state of space science and technology reveals that a handful of Powers are reaping their benefits on a privileged and even unilateral basis, forming what is essentially a 'space oligopoly'. This is in clear violation of the principle that 'space is the common heritage of mankind'.

That analysis also reveals firstly the existence of a space bipolarization that sets the two great Powers, the United States and the Soviet Union, apart from the rest of the international community. Secondly, it reveals what seems to be a transition towards a healthy multipolarity, but one which likewise involves another small, select group of States. The result of this is neither to reduce the technological gap between the developed and the undeveloped countries nor to give effect to the principle of international cooperation.

It must accordingly be noted with concern that a process which seemed in the beginning to be moving towards universal convergence is moving towards a gradual divergence which entails uncontrolled and unequal scientific and technological progress.

The only possible solution to this problem is the strengthening of the scientific and technological capacity of the developing countries, affording them means of effective access to the resources adequate to satisfy their real needs.

This could be organized at two complementary levels, the world level and the regional level, so as to take maximum advantage of locally available resources while maintaining harmony with universal efforts and goals.

At the same time, the developing States should take due account of, and demonstrate their genuine interest in, the definite practical possibilities the space age opens to them, claiming their rights but assuming at the same time the corresponding and unavoidable responsibilities.

In the field of space activity, science and technology and science and law go hand in hand, the latter serving as a stimulus and as a guarantee that the former will be guided by and be consistent with the prevailing purposes and principles of the international community.

On the basis of those principles and in order to avoid deepening the existing gap between the developed and the developing countries, we should renew our efforts to ensure that the work done in the legal sphere is brought to fruition and matches the dynamism and tangibility of the technological advances.

We cannot allow space activity to be transformed into a 'cosmic chess game' in which the cleverest and the most powerful attempt to checkmate their opponents. In this area, no opponents should exist, but only a single beneficiary: mankind.

We consequently believe that if we are to take a realistic and honest view of space activity, we must reconcile the following three essential factors: the interests of States which have made clear advances in the space race, the interests of those which have not done so, and the interests of mankind as a whole, in which the interests of both the other groups meet and are indissolubly merged.

The free exploration and use of outer space, the Moon and the other celestial bodies must not come to mean, in practice, that a handful of States can freely penetrate most of the States of the globe and exploit them from space.

What must be kept firmly and universally in mind is the overriding principle that outer space, the Moon and the celestial bodies are 'the common heritage of mankind', together with all the corollaries that flow logically from that principle and which have been, in essence, embodied in the existing legal instruments.

It is therefore time to urge all States to accede to or ratify that body of norms, and to make a special appeal to the developing countries, so that their commitment to action might strengthen the rule of law.

The strengthening of the science-and-law sector will promote progress in the science-and-technology sector while at the same time guaranteeing that scientific and technological advances will be in keeping with the objectives of the international community.

Accordingly, that community and the specialized agencies of the United Nations have a responsibility to take up resolutely and honestly the task of developing the legal principles already in force, filling in the gaps and overcoming the conflicts of interest that now exist and have led to the lack of progress we have noted.

Our Organization should also endeavour to strengthen and coordinate its scientific and technological system, enhancing at the same time the scientific and technological capacity of the developing countries, giving due consideration to their individual characteristics and needs, and providing them with the appropriate financial resources and assistance."

(A/CONF.101/NP/41, paras. 72-144)

The Eastern Republic of Uruguay has incorporated into its national legislation the following multilateral international treaties:

(a) Act No. 10.683: Charter of the United Nations - Article 1, paragraph 3, Article 2, paragraph 5, Article 55, paragraph 2, and Article 56;

(b) Act No. 13.854 of 4 June 1970: "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies";

(c) Act. No. 12.685 of 17 September 1968: "Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space";

(d) Decree-Law No. 14.545 of July 1976: "Convention on International Liability for Damage Caused by Space Objects";

(e) Decree-Law No. 15.169 of 10 August 1981: "Agreement Governing the Activities of States on the Moon and Other Celestial Bodies";

(f) Decree-Law No. 14.675 of 10 July 1977: "Convention on Registration of Objects Launched into Outer Space";

(g) Act No. 13.098 of 18 October 1962: "Statute of the International Atomic Energy Agency";

(h) Act No. 13.699 of 22 June 1968: "Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)";

(i) Act No. 13.684 of 17 September 1968: "Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water";

(j) Decree-Law No. 14.971 of 14 December 1979: "Antarctic Treaty";

(k) Decree-Law No. 15.262 of 23 April 1982: "Agreement relating to the International Telecommunications Satellite Organization (INTELSAT)";

(l) Decree-Law No. 15.604 of 27 July 1984: "International Telecommunication Convention (Nairobi)";

(m) Special Agreement on Cooperation in the Field of Aerospace, supplementing the Agreement on Scientific and Technological Cooperation between the Government of the Argentine Republic and the Government of the Eastern Republic of Uruguay - incorporated into domestic legislation by Executive Authority Resolution No. 2665/981 of 9 November 1981.